IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Consolidated Cases Nos. 13,201 and 13,202

GRAHAME THOMAS SMALLWOOD, JR., ET AL., *Appellants*

v.

VIOLA A. HODSON, ET AL., *Appellees*

Appeal From the United States District Court for the District of Columbia

---

APPELLANTS' SUPPLEMENTAL APPENDIX

[The transcript following appears at pages 345 to 350 of the supplemental record, filed October 29, 1956.]

Proceedings—Monday, October 31, 1955

The Deputy Clerk. Smallwood et al. versus Hodson et al.

The Court. You may bring in the jury.

(The jury now being in the box:)

The Court. Gentlemen, have you prepared any objections you may have to any of the hospital records? You may come to the bench and I will pass on the objections at the bench.

(Emergency Hospital records are identified as Plaintiffs' Exhibit No. 18.)

(At the bench:)

The Court. Very well. Do you have the exhibits? (The exhibits, hospital records, were handed to the Court.)

You are offering in evidence the marked portions of the records of the Emergency Hospital and the St. Elizabeths Hospital, Mr. Hilland?

Mr. Hilland. Yes, Your Honor.

The Court. To which of these extracts do you object? I need not look at the others, of course.

Mr. Raysor. Your Honor, I have gone over this file with Mr. Hilland and I believe there are two that we object to in the Emergency Hospital. Those are two sheets, of April 18 and October 5.

The Court. You don't object to any others?

Mr. Raysor. No; that is right.

The Court. Do you object to any of the others?

Mr. Raysor. I don't think we objected to anything in here, either. If we did, it was with a white slip, if I may just check it.

May it please the Court, on the first jacket of St. Elizabeths, we have no objection. On this last record, I believe Your Honor has already ruled that one out.

Mr. Hilland. Your Honor has already ruled that out.

The Court. Yes, I have already ruled on that.

Mr. Raysor. Then that will not be read.

Then this is a doctor's statement; so that I believe Your Honor has ruled that is not a routine record, under the New York Life case.

The Court. Just what part? Do you object to the whole page?

Mr. Raysor. Just this part.

The Court. Because the second half of the page is obviously a routine entry.

Mr. Raysor. Yes; I have no objection to that, Your Honor.

The Court. That is a record of what she told to whomever made this record.

Mr. Hilland. It is a history of the case, as I recall.

The Court. Yes, that is what that is. I am going to sustain the objection to that. Of course, the history given to a physician is admissible, if the physician is testifying to what the patient told him. But a written narrative of it is hearsay, because it is not within the Federal Shopbook Rule. It is not a record kept in the due course of business, as interpreted in the Taylor case or the Clainos case. I will sustain the objection.

Mr. Hilland. I thought it would be, in view of the fact that it is normal practice to take the history of patients, as merely factual statements. It does tend to show her state of mind.

The Court. Yes, of course. I think it is relevant. In other words, if the doctor were here, that would be entirely admissible. But I think it is not a routine entry. It is a paraphrasing made by the person making the record, of what the patient told him or her. I think in some jurisdictions this would be admissible. But under the narrow construction placed upon the Federal Shopbook Rule by the Taylor case and the Clainos case, I am constrained to hold that this is not admissible. I think if I were sitting in the Second Circuit I would hold the other way, because of Court of Appeals decisions there. And I must say the Supreme Court decision in Palmer against Hoffman tends to sustain the view of our Court of Appeals, because there a narrative of an accident made by a railroad employee to his superior was held inadmissible as not being a record kept in the due course of business.

Mr. Hilland. In order to get this identified, may I say it is on the—

The Court. If you wish, you may have it transcribed into the record, so as to preserve your rights.

Mr. Hilland. All right. It is part of the St. Elizabeths Hospital record. The form is "Clinical Record." The

date is April 30, 1954. I can't quite read the first sentence; but it appears to be "Patient is direct admission to hospital. She states she was taken from her home, where she lived alone, and brought here. Does not know why. She doesn't realize she is sick. She states she has been working in a store. She knew her husband died 30 years ago. She has no children, but some nieces and nephews. She is quite cooperative, pleasant, answers questions readily. At times she is incoherent. Shows gross memory defects, and is disoriented."

The Court. Your objection to the Court's ruling is noted.

Mr. Hilland. Yes, Your Honor.